

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DANIEL JACOBSON,

Plaintiff,

-against-

LAW OFFICE OF MICHAEL  
MICHAEL PLLC, MICHAEL  
MICHAEL,

**MEMORANDUM AND ORDER**

Case No. 1:21-cv-02728-FB-RML

Defendants.

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*Appearances:*

*For the Plaintiff:*

BRUCE J. CHERIFF  
Sheriff & Fink, P.C.  
PO Box 985  
Mt. Kisco, NY 10549-0985

*For the Defendants:*

MARK K. ANESH  
SARAH A. ADAM  
Lewis Brisbois Bisgaard & Smith LLP  
77 Water Street, Suite 2100  
New York, NY 10005

**BLOCK, Senior District Judge:**

On May 18, 2021, Magistrate Judge Roanne Mann issued a *sua sponte* Report and Recommendation (“R&R”), recommending that the pending action “be remanded” to “Supreme Court, Kings County.” *See* ECF No. 7 at 2. Magistrate Judge Mann noted that the forum defendant rule is controlling in this case because the defendants are citizens of New York. *Id.* at 1. The rule bars a defendant who is a resident of the state in which removal is sought from removing an action to federal court. *See, e.g., Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 705 (2d Cir. 2019); *see also* 28 U.S.C. § 1441(b)(2). A district court may order remand *sua sponte*

within 30 days of filing of the notice of removal. Here, the notice of removal was filed on May 14, 2021, and Magistrate Judge Mann's *sua sponte* R&R was filed on May 18, 2021.

The R&R stated that failure to object within fourteen days of the date of the R&R precludes further review. No objections were filed. If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without *de novo* review. *See, e.g., Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears in Magistrate Judge Mann's decision. Accordingly, the Court **ADOPTS** the R&R and orders the action **REMANDED** to Supreme Court, Kings County.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
June 25, 2021